

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 6/25/2024
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARLOS R. ROSA,

Plaintiff,

-v-

PARK AVENUE SOUTH MANAGEMENT,
LLC, *et al.*,

Defendants.

1:24-cv-119-GHW

ORDER

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GREGORY H. WOODS, United States District Judge:

On May 20, 2024, the Court ordered Plaintiff to show cause why his claims against several of the defendants should not be dismissed for failure to serve process within the time allowed by Federal Rule of Civil Procedure 4(m). Dkt. No. 20. On May 24, 2024, counsel for Plaintiff filed an affirmation indicating that he was in discussions with some of the defendants regarding settlement and waiver of service. Dkt. No. 21. On May 30, 2024, the Court issued an order directing Plaintiff to file waivers of service for Defendants Park Avenue South Management, LLC and John Doe no later than June 3, 2024. Dkt. No. 23.

Because Plaintiff failed to do so, the Court issued a renewed order to show cause why Plaintiff's claims against those defendants should not be dismissed for failure to serve process. Dkt. No. 26. On June 17, 2024, Plaintiff's counsel filed an affirmation stating that he was in contact with counsel for Defendant Park Avenue South Management, LLC but had not "reached any agreement to waive service" and that "defendant John Doe has not been served, nor has my office been in contact with him or his counsel, if any." Dkt. No. 26.


While Rule 4(m) provides that "if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period," Fed. R. Civ. P. 4(m), "[g]ood cause is generally found only in exceptional circumstances where the plaintiff's failure to serve process in a

timely manner was the result of circumstances beyond its control.” *Vaher v. Town of Orangetown*, N.Y., 916 F. Supp. 2d 404, 419 (S.D.N.Y. 2013) (citation omitted). Where Plaintiff does not give any reason why his failure to serve should be excused for good cause, dismissal is appropriate. *See, e.g., Astarita v. Urgo Butts & Co.*, 96-cv-6991 (PKL), 1997 WL 317028, at *4 (S.D.N.Y. June 10, 1997) (dismissing complaint where “Plaintiff ha[d] not argued or shown that her failure to serve should be overlooked for ‘good cause’ or should be deemed to result from excusable neglect.”).

Because Plaintiff has not provided any reason for his failure to timely serve either John Doe or Park Avenue South Management, LLC, the claims against them are dismissed without prejudice. Plaintiff is directed to serve a copy of this order on all Defendants and to retain proof of service.

SO ORDERED.

Dated: June 25, 2024
New York, New York



GREGORY H. WOODS
United States District Judge